

## PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

### Subpart A—General Provisions

Sec.

- 229.1 Purpose and scope.
- 229.2 Definitions.
- 229.3 Prohibitions.
- 229.4 Requirements for Category I and II fisheries.
- 229.5 Requirements for Category III fisheries.
- 229.6 Reporting requirements.
- 229.7 Monitoring of incidental mortalities and serious injuries.
- 229.8 Publication of List of Fisheries.
- 229.9 Emergency regulations.
- 229.10 Penalties.
- 229.11 Confidential fisheries data.
- 229.12 Consultation with the Secretary of the Interior.

### Subpart B—Takes of Endangered and Threatened Marine Mammals

- 229.20 Issuance of permits.

### Subpart C—Take Reduction Plan Regulations and Emergency Regulations

- 229.31 Pacific Offshore Cetacean Take Reduction Plan.
- 229.32 Atlantic large whale take reduction plan regulations.

#### FIGURE 1 TO PART 229—DRIFT GILLNET PINGER CONFIGURATION AND EXTENDER REQUIREMENTS

AUTHORITY: 16 U.S.C. 1361 *et seq.*

SOURCE: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

### Subpart A—General Provisions

#### § 229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act's general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the

United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of Subpart B also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations.

(g) The purposes of the regulations in this part are to:

(1) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations below the potential biological removal level for a particular stock, and

(2) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

#### § 229.2 Definitions.

In addition to the definitions contained in the Act and §216.3 of this chapter, and unless the context otherwise requires, in this part 229:

*Act* or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

*American lobster or lobster* means *Homarus americanus*.

*Anchored gillnet* means any gillnet gear, including sink gillnets, that is set anywhere in the water column and which is anchored, secured or weighted to the bottom.

*Assistant Administrator* means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

*Authorization Certificate* means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

*Breaking strength* means the highest tensile force which an object can withstand before breaking.

*Bridle* means the lines connecting a gillnet to an anchor or buoy line.

*Buoy line* means a line connecting fishing gear in the water to a buoy at the surface of the water.

*Category I fishery* means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level.

*Category II fishery* means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is "occasional" by

evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

*Category III fishery* means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) Ten percent or less of any marine mammal stock's potential biological removal level, or

(2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Administrator.

*Commercial fishing operation* means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in §216.3 of this chapter) activities and aquaculture activities.

*Depleted species* means any species or population that has been designated as depleted under the Act and is listed in §216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

*Driftnet, drift gillnet, or drift entanglement gear* means gillnet gear that is not anchored, secured or weighted to the bottom.

*Fish with or fishing with* means to use, set, or haul back gear or allow gear that is set to remain in the water.

*Fisher* means the vessel owner or operator or owner or operator of gear in a nonvessel fishery.

*Fishery* has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

*Fishing trip* means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port or the return of a fisher from tending gear in a nonvessel fishery.

*Fishing vessel or vessel* means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

*Float-line* means the rope at the top of a gillnet from which the mesh portion of the net is hung.

*Gillnet* means fishing gear consisting of a wall of webbing or nets, designed or configured so that the webbing or nets are held approximately vertically in the water column designed to capture fish by entanglement, gilling, or wedging. Gillnets include gillnets of all types such as sink gillnets, other anchored gillnets, and drift gillnets.

*Groundline*, with reference to lobster pot gear, means a line connecting lobster pots in a lobster pot trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

*Incidental, but not intentional, take* means the non-intentional or accidental taking of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

*Incidental mortality* means the non-intentional or accidental death of a marine mammal that results from, but is

not the purpose of, carrying out an otherwise lawful action.

*Injury* means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

*Inshore Lobster waters* means all state and Federal waters between 36°33'00.8"N lat. (the Virginia/North Carolina border) and the U.S./Canada border that is shoreward of the area designated below as "offshore lobster waters."

*Interaction* means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

*Lead-line* means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

*List of Fisheries* means the most recent final list of commercial fisheries published in the FEDERAL REGISTER by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

*Lobster pot* means any trap, structure or other device that is placed on the ocean bottom and is designed to or is capable of catching lobsters.

*Lobster pot trawl* means two or more lobster pots attached to a single groundline.

*Mid-Atlantic coastal waters* means waters bounded by the line defined by the

following points: The southern shoreline of Long Island, New York at 72°30'W, then due south to 33°51'N lat., thence west to the North Carolina/South Carolina border.

*Minimum population estimate* means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

*Negligible impact* has the same meaning as in §228.3 of this chapter.

*Net productivity rate* means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

*NMFS* means the National Marine Fisheries Service.

*Nonvessel fishery* means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

*Northeast waters* means those U.S. waters east of 72°30'W and north of 36°33'00.8"N lat. (the Virginia-North Carolina border).

*Observer* means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

*Offshore lobster waters* includes all U.S. waters seaward of the following lines except for waters in the Great South Channel critical right whale habitat: Beginning at the international boundary between the U.S. and Canada; thence southerly along the boundary to the LORAN C 9960-Y-44400 line; thence southwesterly along the 44400 line to 70°W long.; thence south along the 70° meridian to the LORAN C 9960-W-13700 line; thence southeasterly to the intersection with the LORAN C 9960-Y-43700 line; thence westerly to the intersection with the LORAN C 9960-W-14610 line; thence southerly along the 14610 line to the intersection with the

LORAN C 9960-Y-43700 line; thence southwesterly to the intersection of the LORAN C lines 9960-Y-43500 and 9960-X-26400; thence southerly to the intersection of the LORAN C lines 9960-Y-42600 and 9960-X-26550; thence southerly to the intersection of the LORAN C lines 9960-Y-42300 and 9960-X-26700; thence southerly to the intersection of the LORAN C lines 9960-Y-41600 and 9960-X-26875; thence southerly in a line toward the intersection of LORAN C lines 9960-Y-40600 and 9960-X-26800 but stopping at 36°33'00.8"N lat. (the North Carolina/Virginia border); thence due west to the shore.

*Operator*, with respect to any vessel, means the master, captain, or other individual in charge of that vessel.

*Potential biological removal level* means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;

(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and

(3) A recovery factor of between 0.1 and 1.0.

*Regional Fishery Management Council* means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

*Serious injury* means any injury that will likely result in mortality.

*Sink gillnet* has the meaning specified in 50 CFR 648.2.

*Sinking line* means rope that sinks and does not float at any point in the water column. Polypropylene rope is not sinking line unless it contains a lead core.

*Southeast waters* means waters south of a line extending due eastward from 33°51'N lat. (the North Carolina/South Carolina border).

*Spotter plane* means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

*Stellwagen Bank/Jeffreys Ledge area* means all Federal waters in the Gulf of Maine, except those designated as right whale critical habitat, that lie south of the 43°15'N lat. line and west of the 70° W long. line.

*Strategic stock* means a marine mammal stock:

(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

*Strikenet or to fish with strikenet gear* means a gillnet, or a net similar in construction to a gillnet, that is designed so that when it is deployed, it encircles or encloses an area of water either with the net, or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

*Take Reduction Plan* means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

*Take Reduction Team* means a team established to recommend methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

*Tended gear or tend* means active fishing gear that is physically attached to a vessel or to fish so that active gear is attached to the vessel.

*U.S. waters* means both state and Federal waters to the outer boundaries of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

*Vessel owner or operator* means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

*Vessel of the United States* has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

*Weak link* means a breakable device that will part when subject to a certain tension load.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39183, July 22, 1997]

### § 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the taking of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(f) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(g) It is prohibited to fish with lobster pot gear in the areas and for the times specified in § 229.32 (c)(4) through (c)(10) unless the lobster pot gear meets the marking requirements specified in

§ 229.32(c)(1) and complies with the closures, modifications, and restrictions specified in § 229.32 (c)(2) through (c)(10).

(h) It is prohibited to fish with anchored gillnet gear in the areas and for the times specified in § 229.32 (d)(3) through (d)(8) unless that gillnet gear meets the marking requirements specified in § 229.32(d)(1) and complies with the closures, modifications, and restrictions specified in § 229.32 (d)(2) through (d)(8).

(i) It is prohibited to fish with drift gillnets in the areas and for the times specified in § 229.32(e)(2) unless the drift gillnet gear meets the marking requirements specified in § 229.32(e)(1) and complies with the restrictions specified in § 229.32(e)(2).

(j) It is prohibited to fish with shark driftnet gear in the areas and for the times specified in § 229.32(f) (2) and (3) unless the gear meets the marking requirements specified in § 229.32(f)(1) and complies with the restrictions and requirements specified in §§ 229.32 (f)(2) and (f)(3).

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39184, July 22, 1997]

#### **§ 229.4 Requirements for Category I and II fisheries.**

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the FEDERAL REGISTER announcing the integrated program and summarizing how an owner

or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used.

(vi) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(3) If a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the

owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(c) *Fee.* A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(d) *Address.* Unless the granting and administration of authorizations under part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration forms should be sent to the NMFS Regional Offices are given:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907-586-7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; telephone: 206-526-4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 310-980-4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 508-281-9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 813-570-5301.

(e) *Issuance.* (1) Unless an integrated registration program is in place, NMFS will issue an Authorization Certificate

and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§229.6 and 229.7.

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(2) If an integrated registration program has been established, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt. In order for a Authorization Certificate to be valid, the certification must be signed and dated by the owner or an authorized representative of the owner.

(f) *Authorization Certificate and decal requirements.* (1) The annual decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and annual decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(g) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(h) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official onboard observer, or authorized otherwise by a scientific research permit that is in the possession of the operator.

(i) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(j) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(k) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(l) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(m) *Expiration.* Authorization Certificates and annual decals expire at the end of each calendar year.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 46, Jan. 2, 1997]

#### **§ 229.5 Requirements for Category III fisheries.**

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official onboard observer, or authorized otherwise by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(f).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

#### **§ 229.6 Reporting requirements.**

(a) Vessel owners or operators engaged in any Category I, II, or III fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent



within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

- (1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;
  - (2) The name and address of the vessel owner or operator;
  - (3) The name and description of the fishery, including gear type and target species; and
  - (4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.
- (b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (4) of this section with the exception of the vessel name and registration number.

**§ 229.7 Monitoring of incidental mortalities and serious injuries.**

(a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

- (1) Obtain statistically reliable estimates of incidental mortality and serious injury;
- (2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and
- (3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may place observers aboard Category I and II vessels as necessary. Observers may, among other tasks:

- (1) Record incidental mortality and injury, and bycatch of other nontarget species;

- (2) Record numbers of marine mammals sighted; and

(3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for Authorization Certificate holders.* (1) If requested by NMFS or a designated contractor providing observer services to NMFS, an Authorization Certificate holder engaged in a Category I or II fishery must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the Authorization Certificate holder must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The Authorization Certificate holder and crew must cooperate with the observer in the performance of the observer's duties including:

- (i) Providing adequate accommodations;
- (ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;
- (iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;
- (iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling marine mammal or other protected species specimens, upon request by NMFS personnel;

(vii) Sampling, retaining and storing mammal or other protected species specimens, upon request by NMFS personnel, designated contractors, or the observer aboard, if adequate facilities are available and if feasible;

(viii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(ix) Not impairing or in any way interfering with the research or observations being carried out; and

(x) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals incidentally killed during fishing operations and which are readily accessible to crew members, must be brought onboard the vessel as biological specimens and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the aboard observer. Marine mammals so collected and retained as biological specimens must, upon request by NMFS personnel, designated contractors, or the observer aboard, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer aboard, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. Such biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(6) Any marine mammal incidentally taken may be retained only if authorized by NMFS personnel, designated contractors or an official observer aboard, or by a scientific research permit that is in the possession of the operator.

(d) *Observer requirements for Category III fisheries.* (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of § 229.7(c).

(e) *Alternative observer program.* The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

#### **§ 229.8 Publication of List of Fisheries.**

(a) The Assistant Administrator will publish in the FEDERAL REGISTER a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that interact with commercial fishing operations and the estimated number of vessels and persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notification and opportunity for public comment. The revised final List of Fisheries will become effective no sooner than 30 days after publication in the FEDERAL REGISTER.

**§ 229.9 Emergency regulations.**

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental

mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Shall be published in the FEDERAL REGISTER and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the FEDERAL REGISTER at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

**§ 229.10 Penalties.**

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on the vessel or is in possession of the operator of the vessel shall be subject to a penalty of not more than \$100.

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or failure to comply with requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107 and may subject them to the penalties of section 106 of the Act, which will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and serious injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or if the Authorization Certificate holder

fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

#### **§ 229.11 Confidential fisheries data.**

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216-100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216-100 (see ADDRESSES). Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

#### **§ 229.12 Consultation with the Secretary of the Interior.**

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making

determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

### Subpart B—Takes of Endangered and Threatened Marine Mammals

#### § 229.20 Issuance of permits.

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the FEDERAL REGISTER of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party

may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the FEDERAL REGISTER a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify,

after notification and opportunity for public comment, the list of fisheries published in accordance with §229.21(b) whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters*. This subpart does not apply to the taking of Southern (California) sea otters.

### Subpart C—Take Reduction Plan Regulations and Emergency Regulations

#### § 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope*. The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders*. An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) *Pingers*. (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz ( $\pm$  2 kHz) sound at 132 dB ( $\pm$  4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds ( $\pm$  15 milliseconds), and repeating every 4 seconds ( $\pm$  .2 seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, drift gillnet vessels with gillnets onboard must carry enough pingers to meet the configuration requirements set forth under paragraph (c)(3) of this section.

(3) Pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.9 m) apart. Pingers attached on ex-

tenders, or attached to the floatline with lanyards, must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. Pingers on or near the floatline and on or near the leadline must be staggered, such that the horizontal distance between a pinger on or near the floatline and a pinger on the leadline is no more than 150 ft (45.5 m). Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(4) The pingers must be operational and functioning at all times during deployment.

(5) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops*. After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998]

#### § 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters*. The regulations in this section apply to all U.S. waters except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters*. The regulations in this section do not apply to waters landward of the following lines:

##### Maine and New Hampshire

44° 49.52' N 66° 56.10' W TO 44° 48.90' N 66° 57.00' W  
 44° 38.60' N 67° 11.50' W TO 44° 36.26' N 67° 15.70' W  
 44° 36.26' N 67° 15.70' W TO 44° 27.80' N 67° 32.85' W  
 44° 27.80' N 67° 32.85' W TO 44° 26.48' N 67° 36.00' W  
 44° 26.48' N 67° 36.00' W TO 44° 21.75' N 67° 51.85' W

## § 229.32

44° 21.75' N 67° 51.85' W TO 44° 19.60' N 68° 03.00' W  
 44° 19.45' N 68° 02.00' W TO 44° 14.40' N 68° 11.55' W  
 44° 14.15' N 68° 11.90' W TO 44° 13.25' N 68° 20.20' W  
 44° 13.25' N 68° 20.20' W TO 44° 13.71' N 68° 28.31' W  
 44° 13.21' N 68° 28.92' W TO 44° 10.48' N 68° 35.80' W  
 44° 10.48' N 68° 35.80' W TO 44° 08.80' N 68° 40.80' W  
 44° 08.80' N 68° 40.80' W TO 44° 02.25' N 68° 48.25' W  
 44° 02.10' N 68° 48.40' W TO 43° 51.75' N 69° 17.10' W  
 43° 51.75' N 69° 17.10' W TO 43° 48.15' N 69° 35.90' W  
 43° 48.15' N 69° 35.90' W TO 43° 42.00' N 69° 51.10' W  
 43° 42.00' N 69° 50.10' W TO 43° 33.47' N 70° 12.35' W  
 43° 33.47' N 70° 12.35' W TO 43° 21.90' N 70° 24.90' W

### Rhode Island

41° 22.41' N 71° 30.80' W TO 41° 22.41' N 71° 30.85' W (Pt. Judith Pond Inlet)  
 41° 21.31' N 71° 38.30' W TO 41° 21.30' N 71° 38.33' W (Ninigret Pond Inlet)  
 41° 19.90' N 71° 43.08' W TO 41° 19.90' N 71° 43.10' W (Quonochontaug Pond Inlet)

### New York

West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher's Island to Watch Hill, RI. (Long Island Sound)

41° 11.40' N 72° 09.70' W TO 41° 04.50' N 71° 51.60' W (Gardiners Bay)  
 40° 50.30' N 72° 28.50' W TO 40° 50.36' N 72° 28.67' W (Shinnecock Bay Inlet)  
 40° 45.70' N 72° 45.15' W TO 40° 45.72' N 72° 45.30' W (Moriches Bay Inlet)  
 40° 37.73' N 73° 18.40' W TO 40° 38.00' N 73° 18.56' W (Fire Island Inlet)  
 40° 34.40' N 73° 34.55' W TO 40° 35.08' N 73° 35.22' W (Jones Inlet)

### New Jersey

39° 45.90' N 74° 05.90' W TO 39° 45.15' N 74° 06.20' W (Barnegat Inlet)  
 39° 30.70' N 74° 16.70' W TO 39° 26.30' N 74° 19.75' W (Beach Haven to Brigantine Inlet)  
 38° 56.20' N 74° 51.70' W TO 38° 56.20' N 74° 51.90' W (Cape May Inlet)  
 39° 16.70' N 75° 14.60' W TO 39° 11.25' N 75° 23.90' W (Delaware Bay)

### Maryland/Virginia

38° 19.48' N 75° 05.10' W TO 38° 19.35' N 75° 05.25' W (Ocean City Inlet)

## 50 CFR Ch. II (10–1–98 Edition)

37° 52.50' N 75° 24.30' W TO 37° 11.90' N 75° 48.30' W (Chincoteague to Ship Shoal Inlet)  
 37° 11.10' N 75° 49.30' W TO 37° 10.65' N 75° 49.60' W (Little Inlet)  
 37° 07.00' N 75° 53.75' W TO 37° 05.30' N 75° 56.50' W (Smith Island Inlet)

### North Carolina to Florida

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Gear marking provisions*—(1) *Gear marking required for specified gear*—(i) *Specified gear*. Specified fishing gear consists of lobster pot gear in inshore and offshore lobster waters, anchored gillnet gear in northeast waters and in mid-Atlantic coastal waters; drift gillnet gear in mid-Atlantic coastal waters; and shark driftnet gear in southeast waters.

(ii) *Requirement*. From January 1, 1998, and as otherwise required in paragraphs (c)(1), (d)(1), (e)(1), and (f)(1) of this section, any person who owns or fishes with specified fishing gear must mark that gear as specified in paragraphs (b)(2) and (b)(3) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(2) *Color code*. Gear must be marked as specified with the appropriate colors to designate gear-types as follows:

Lobster pot gear in inshore lobster waters—red and green  
 Lobster pot gear in offshore lobster waters—red and blue  
 Anchored gillnet gear in northeast waters—green and yellow  
 Anchored gillnet gear in mid-Atlantic waters—green and black  
 Mid-Atlantic driftnet gear—blue and yellow  
 Shark driftnet gear—blue and black

(3) *Markings*. Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (c)(1), (d)(1), (e)(1), and (f)(1) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed

within 6 inches (15.2 cm) of each other. (For example, buoy lines of inshore lobster pot gear must have a red mark and a green mark, each at least 4 inches long, with the red and green marks placed within 6 inches of each other.) If the color of the rope is the same or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code or associated neutral band, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or thin line may be woven into or through the line, or the line may be marked as approved in writing by the Assistant Administrator. If the Assistant Administrator revises the gear marking requirements under paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to lobster pot gear in regulated waters*—(1) *Gear marking requirements.* No person may fish with lobster pot gear in regulated waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with lobster pot gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(2) *No line floating at the surface.* No person may fish with lobster pot gear that has any portion of the buoy line floating at the surface at any time, except that, if there are more than one buoy attached to a single buoy line or if there are a high flyer and a buoy used together on a single buoy line, floating line may be used between these objects.

(3) *No wet storage of gear.* No person may leave lobster pot gear in the water without hauling it out of the water at least once in 30 days.

(4) *Cape Cod Bay Restricted area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator extends that area in accordance with paragraph (g) of this section.

(ii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g) of this section. The Assistant Administrator may waive the restrictions of these paragraphs through a document in the FEDERAL REGISTER if it is determined that right whales have left the critical habitat and are unlikely to return for the remainder of the winter restricted period. During the winter restricted period, no person may fish with lobster pot gear in the Cape Cod Bay Restricted Area unless that person's gear complies with the following requirements:

(A) *Weak links.* All buoy lines are attached to the buoy with a weak link. The breaking strength of this weak link must be no more than 1100 lb;

(B) *Multiple pot trawls.* All pots are set in trawls of four or more pots. Single pots and two or three pot trawls are not allowed.

(C) *Sinking buoy lines.* All buoy lines are sinking line except the bottom portion of the line, which may be a section of floating line not to exceed 1/3 the overall length of the buoy line.

(D) *Sinking ground line.* All ground lines are made entirely of sinking line.

(iii) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with lobster pot gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Great South Channel Restricted Lobster Area*—(i) *Area.* The Great South Channel restricted area consists of the Great South Channel Critical Habitat area specified under 50 CFR 216.13(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with



paragraph (g) of this section. During the spring closed period, no person may fish with or set lobster pot gear in the Great South Channel restricted lobster area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Other restricted period.* From July 1 through March 31 no person may fish with lobster pot gear in the Great South Channel Restricted Lobster Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15' N lat. line and west of the 70° W long. line, except for right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear Requirements.* No person may fish with lobster pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) *Northern offshore lobster waters—(i) Area.* The northern offshore waters area includes all offshore lobster waters north of 41°30' N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* No person may fish with lobster pot gear in the northern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may re-

vise this requirement in accordance with paragraph (g) of this section.

(8) *Southern offshore lobster waters—(i) Area.* The southern offshore waters area includes all offshore lobster waters south of 41°30' N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster pot gear in the southern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(9) *Northern inshore lobster waters—(i) Area.* Northern inshore lobster waters consist of all inshore lobster waters north of 41°30' N lat., except the Cape Cod Bay restricted area, Great South Channel restricted area and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear requirements.* No person may fish with lobster pot gear in the northern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(10) *Southern inshore lobster waters—(i) Area.* The southern inshore lobster waters consist of all inshore lobster waters south of 41°30' N lat., except the Great South Channel restricted area.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster pot gear in the southern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(11) *Lobster Take Reduction Technology List.* The following gear characteristics comprise the Lobster Take Reduction Technology List:

(i) All buoy lines are 7/16 inches in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) For gear set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb.

(iv) For gear set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than  $\frac{3}{4}$  the diameter of the buoy line.

(v) All buoy lines are composed entirely of sinking line.

(vi) All ground lines are made of sinking line.

(d) *Restrictions applicable to anchored gillnet gear in regulated waters*—(1) *Marking requirements.* No person may fish with anchored gillnet gear in northeast or mid-Atlantic waters unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or two ft below a weak link) and midway along the length of the buoy line.

(2) *No line floating at the surface.* No person may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time, except that, if there are more than one buoy attached to a single buoy line or if there are a high flyer and a buoy used together on a single buoy line, floating line may be used between these objects.

(3) *Cape Cod Bay restricted area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator extends that area under paragraph (g) of this section.

(ii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period

under paragraph (g) of this section. During the winter restricted period, no person may fish with anchored gillnet gear in the Cape Cod Bay restricted area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (g) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iii) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel restricted gillnet area*—(i) *Area.* The Great South Channel restricted gillnet area consists of the area bounded by lines connecting the following four points: 41°02.2' N/69°02' W., 41°43.5' N/69°36.3' W., 42°10' N/68°31' W., and 41°38' N/68°13' W., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section. This area includes the Great South Channel critical habitat area specified under 50 CFR 216.13(a), except for the "sliver area" identified below.

(ii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may set or fish with anchored gillnet gear in the Great South Channel restricted gillnet area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Other restricted period.* From July 1 through March 31 no person may fish with lobster pot gear in the Great South Channel restricted gillnet area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Great South Channel sliver restricted area*—(i) *Area.* The Great South Channel sliver restricted area consists of the area bounded by lines connecting the following points: 41°02.2' N/69°02' W., 41°43.5' N/69°36.3' W., 41°40' N/69°45' W., and 41°00' N/69°05' W., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Great South Channel sliver restricted area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge restricted area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15' N. lat. line and west of the 70° W long. line, except right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(7) *Other northeast waters area*—(i) *Area.* The other northeast waters area consists of all northeast waters except for the Cape Cod Bay restricted area,

the Great South Channel restricted gillnet area and Great South Channel sliver restricted areas and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the other northeast waters area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(8) *Mid-Atlantic coastal waters area*—(i) *Area.* The mid-Atlantic coastal waters area is defined in § 229.2.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with anchored gillnets in mid-Atlantic coastal waters area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(9) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are 7/16 inches in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) Gear is anchored with the holding power of a 22 lb. danforth-style anchor at each end.

(iv) Gear is anchored with a 50 lb dead weight at each end.

(v) Nets are attached to a lead line weighing 100 lb or more per 300 feet.

(vi) Weak links with a breaking strength of up to 1100 lb are installed in the float rope between net panels.

(vii) All buoy lines are composed entirely of sinking line.

(e) *Restrictions applicable to mid-Atlantic driftnet gear*—(1) *Gear marking requirements.* No person may fish in mid-

Atlantic coastal waters with drift gillnet gear unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with driftnet gear in the mid-Atlantic must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region.

(2) *Restrictions.* From January 1, 1998, during the winter/spring restricted period, no person may fish at night with driftnet gear in the mid-Atlantic coastal waters area unless that gear is tended. Before a vessel returns to port, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period in accordance with paragraph (g) of this section.

(f) *Restrictions applicable to shark driftnet gear*—(1) *Gear marking requirements.* No person may fish with drift gillnet gear in southeast waters unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. From November 1, 1998, all buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 1, 1999, each net panel must be marked along both the float line and the lead line at least once every 100 feet (30.8 m).

(2) *Management areas*—(i) *SEUS restricted area.* The southeast U.S. restricted area consists of the area from 32°00' N lat. (near Savannah, GA) south to 27°51' N lat. (near Sebastian Inlet, FL), extending from the shore eastward to 80°00' W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *SEUS observer area.* The SEUS observer area consists of the SEUS restricted area and an additional area along the coast south to 26°46.5' N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00' W long., unless the Assistant Ad-

ministrator changes that area in accordance with paragraph (g) of this section.

(3) *Restrictions*—(i) *Closure.* Except as provided under paragraph (f)(3)(iii) of this section, no person may fish with driftnet gear in the SEUS restricted area during the closed period. The closed period for this area is from November 1 through March 31 of the following year, unless the Assistant Administrator changes that closed period in accordance with paragraph (g) of this section.

(ii) *Observer requirement.* No person may fish with driftnet gear in the SEUS observer area from November 1 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 1 through March 31 of the following year, no person may fish with driftnet gear aboard that vessel in the SEUS observer area unless an observer is on board that vessel during the trip.

(iii) *Special provision for strikenets.* Fishing with strikenet gear is exempt from the restriction under paragraph (e)(3)(i) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, or fin whale.

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(g) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through

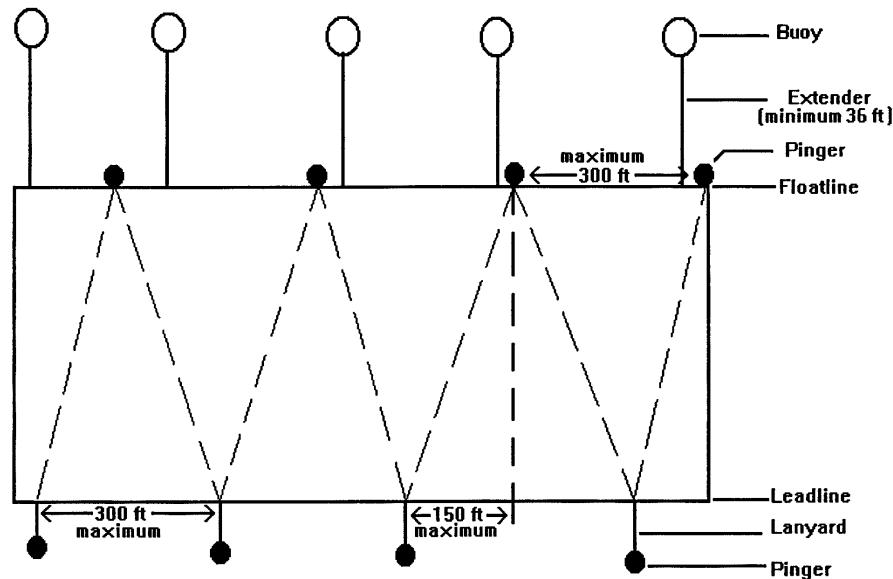
May 15, in the Great South Channel restricted areas from April 1 through June 30, or in the SEUS restricted area from November 1 through March 31 as a result of an entanglement by gear types allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through publication of a rule in the FEDERAL REGISTER if:

- (i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;
- (ii) New gear technology is developed and determined to be appropriate;
- (iii) Revised breaking strengths are determined to be appropriate;
- (iv) New marking systems are developed and determined to be appropriate;
- (v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;
- (vi) NMFS determines that the boundaries of a closed area are not appropriate;
- (vii) Gear testing operations are considered appropriate; or
- (viii) Similar situations occur.

[62 FR 39184, July 22, 1997]

**Figure 1 -- Drift Gillnet Pinger Configuration and Extender Requirements**



[63 FR 27861, May 21, 1998]